

Li (Migration) [2021] AATA 301 (4 January 2021)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Ms Ping Li
CASE NUMBER:	2003193
DIBP REFERENCE(S):	BCC2019/3674863
MEMBER:	David Barker
DATE:	4 January 2021
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision to cancel the applicant's Subclass 155 (Five Year Resident Return) visa.

Statement made on 04 January 2021 at 9:21am

CATCHWORDS

MIGRATION – cancellation – Return (Residence) (Class BB) – Subclass 155 (Five Year Resident Return) – incorrection information in visa applications – previous visa application under different name and date of birth not declared – previous application unsuccessful, period as unlawful non-citizen, detention and voluntary departure – new application within exclusion period – facial image comparison – incorrect information conceded – changed name and date of birth on advice of fortune teller – officially registered details – claim that migration agent provided incorrect information – taken to have filled in application – no evidence to support anonymous allegation of contrived marriage – now separated – discretion to cancel visa – credibility – timing of and reason for change of details – criminal offences (convictions not recorded) not declared – decision under review affirmed

LEGISLATION

*Migration Act 1958 (Cth), ss 98, 101(b), 107, 109(1), (2), 359A
Migration Regulations 1994 (Cth), r 2.41*

LEGISLATION

MIAC v Khadgi (2010) 190 FCR 248

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic

information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to cancel the applicant's Subclass 155 (Five Year Resident Return) visa under s.109(1) of the *Migration Act 1958* (the Act).
2. The delegate cancelled the visa on the basis that the applicant did not comply with the requirement that no incorrect answers are given or provided on her visa applications. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
3. The applicant appeared before the Tribunal on 19 November 2020 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
4. The applicant's response to the hearing invitation indicated that she wished the Tribunal to take evidence from Mr Hong Ge Tian and Mr Yuan Tinge. These people did not attend the hearing and attempts to contact them during the hearing by telephone on contact numbers provided by the applicant were not successful. The Tribunal told the applicant that it would nonetheless consider any written statements or declarations the identified witnesses may wish to make on her behalf that were received within the time frame which would be identified in a letter sent to her following the hearing. Whilst a response was received within the specified time frame from the applicant with regard to information particularised in the letter sent to her pursuant to s.359A of the Act, no written statements from Mr Hong Ge Tian and Mr Yuan Tinge were forthcoming.
5. The applicant was represented in relation to the review by her registered migration agent.
6. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

7. BACKGROUND

8. The following history is based on information contained in the Department file and the applicant's response to the Notice of Intention to Consider Cancellation (NOICC) sent to her by the Department on 27 November 2019.
9. The applicant is a national of the People's Republic of China (China) and is 46 years old. She first arrived in Australia under the name of Yanhua Li in February 2006 on a Tourist (Subclass 676) visa. She applied for a [visa] in August 2006, which was refused in November 2006. The refusal decision was [affirmed] in March 2007 and her appeal of this decision to the Federal Court was dismissed in July 2007. A subsequent request for Ministerial Intervention was unsuccessful and the applicant then remained in Australia unlawfully, from May 2008 until she was located and detained in March 2012 by the Department's NSW Compliance unit. The applicant was found not to satisfy Public Interest Criterion (PIC) 4014 and subject to a three-year exclusion period. She departed Australia voluntarily, under the name and identity of Yanhua Li (date of birth 20 July 1968) on 20 April 2012¹.

¹ Whilst the applicants states that she departed Australia on 22 April 2012 in the December 2019 response to the NOICC, her movement records indicate she departed on 20 April 2012.

10. On 2 November 2012 the applicant married Mr Hong Ge Tian in China under the name and identity of Ping Li (date of birth 25 June 1974).
11. On 18 December 2012 the applicant applied, as a secondary applicant, for a Contributory Parent (Subclass 143) visa on the basis of being a member of the family unit (MOFU) of Mr Hong Ge Tian, who was sponsored for the visa by his son, Mr Yuan Ting. The applicant was granted the Contributory Parent visa on 18 August 2014 and returned to Australia on 1 September 2014.
12. On 12 July 2019 the applicant applied for a Resident Return (Subclass 155) visa, which was granted on 20 July 2019.

CONSIDERATION OF CLAIMS AND EVIDENCE

13. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss.101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.
14. The exercise of the cancellation power under s.109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s.107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s.107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.

Did the notice comply with the requirements in s.107?

15. Section 107 is only engaged if the Minister or delegate considers that the visa holder has not complied with one of the provisions mentioned in s.107(1). It is only then that the Minister or delegate is entitled to give notice to the visa holder under s.107. Therefore, if a notice is to be given under s.107, the Minister or delegate must have reached a state of mind where they consider that the visa holder has not complied with one or more of the relevant provisions.
16. The Tribunal has considered the validity of the NOICC sent to the applicant by registered post on 27 November 2019. In the Tribunal's view, the NOICC contains sufficient particulars to enable the applicant to identify and address the issues, and the applicant's response to the NOICC indicates that she understood the issues that arose. The Tribunal is also satisfied that the delegate had reached the necessary state of mind to engage s.107. The Tribunal finds that the notice issued under s.107 complied with the statutory requirements.

Was there non-compliance as described in the s.107 notice?

17. The issue before the Tribunal is whether there was non-compliance in the way described in the s.107 notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled. The non-compliance identified and particularised in the s.107 notice was non-compliance with respect to s.101 of the Act, which is the requirement that visa applications be correct. Section 101 requires that a non-citizen must fill in or complete his or her application form in such a way that no incorrect answers are given or provided.
18. The NOICC put to the applicant that there was non-compliance with s.101 in respect of responses on both the Contributory Parent visa application lodged on 18 December 2012 and the Resident Return visa application lodged on 12 July 2019.

19. **Responses on visa application forms highlighted in the NOICC**

20. On 18 December 2012, Mr Hong Ge Tian lodged a Form 47PA – Application for a parent to migrate to Australia, for the grant of a Contributory Parent (Subclass 143) visa which included the applicant as a dependant applicant based on her being his partner at the time of lodgement of the application. With respect to the application for a Contributory Parent visa, the NOICC identified and particularised the following responses (in italics and emphasised):

a) Part F - Details of partner

Question 41

Has your partner been known by any other names?

(including name at birth, previous married names, aliases)

No

b) Part K - Character

Question 57

Have you, or any other person included in this application, ever:

- been removed or deported from any country (including Australia)? **No**
- been excluded from or asked to leave any country (including Australia)? **No**

21. As part of her Contributory Parent visa application, the applicant provided a completed Form 80 – Personal particulars for character assessment, dated 8 October 2012. The Form 80 included her answers to the following questions:

c) Question 7

Have you ever been known by other names or spellings of your name?

Examples of the types of other names:

- name at birth
- name before or after marriage
- adoptive or foster name
- alias or pseudonym
- cultural or tribal name or clan/subclan name
- preferred name
- patronymic name
- other spelling of names

No

d) Question 8

22. Have you ever had an alternative date of birth?

23. **No**

e) Question 43

24. Have you travelled to Australia before?

25. **No**

f) Part H - Character details

26. Question 57

27. Have you, or any other person included in this application, ever:

- been removed or deported from any country (including Australia)? **No**
- been refused a visa for Australia or any other country? **No**
- been excluded from or asked to leave any country (including Australia)? **No**

28. On 12 July 2019, the applicant lodged an online application for a Resident Return (Subclass 155) visa. As part of the application, she provided a completed electronic Record of Responses – Application for a Resident Return Visa form, which included her answers (in italics and emphasised) to the following questions:

- g) Other names/spellings
 - 29. Is this applicant currently, or have they ever been known by any other names?
 - 30. **No**
 - 31.
- h) Character Declarations
 - 32. Has the applicant ever been removed or deported from any country (including Australia)?
 - 33. **No**
 - 34.
- i) Has the applicant ever overstayed a visa in any country (including Australia)?
 - 35. **No**

36. The NOICC explained to the applicant that in August 2019 the Department undertook a facial image comparison of:

- a) a facial image of the applicant captured on 9 May 2014, as part of her health assessment for her Contributory Parent visa application.
- b) the facial image of Yanhua Li, date of birth 20 July 1968, captured on 18 March 2012, in relation to her detention as an unlawful non-citizen in Australia.
- c) On 10 September 2019, the finding of the facial comparison report was: *'The facial images have been compared and I am of the opinion that they represent the same person.'*

37. The NOICC put to the applicant that the Department was satisfied that Yanhua Li (date of birth 20 July 1968) and Ping Li (date of birth 25 June 1974) were the same person and accordingly the answers particularised above in points a) – i) were incorrect.

38. *Response to the NOICC*

39. In a written response to the NOICC, dated 16 December 2019, the applicant conceded that she had not given correct information on Form 47PA and Form 80 submitted in association with her application for the Contributory Parent visa, and in responses provided on her application for the Resident Return visa. In explaining why she agreed with the Department's findings, as outlined in the NOICC, the applicant's letter stated in part *'The correct information was that I had known by a name Yanhua Li, date of birth 20 July 1968. I first time arrived in Australia under the name of Yanhua Li on 22 July 2006. I had voluntary removed from Australia on 22 April 2012 with a three years' exclusion period.'*

40. In more recent written submissions, translated 12 November 2020, the applicant states in part that she is Ping Li (former name Yan Hua Li) and that she has never hidden the fact that she had two names. By way of explanation the applicant in these submissions states:

I was born on 20 July 1968 in Tong He county in Heilongjiang Province. My birth name is Yan Hua Li. After I grew up, everything that I did would not go smoothly. When I looked for a boyfriend, they would all either be lazy or gamblers. When I went into business, I always made a loss and would often be tricked by my business partners out of money. Afterwards, my mother asked a fortune teller to read my life. The fortune teller said there was a problem with my birth date and name so everything that I was involved in would not go smoothly. I needed to change both my name and date of birth. The fortune teller chose my name Ping Li and I changed my date of birth to 25 June 1974. I registered a new Hukou in Tong He county, Heilongjiang Province. I have two Hukous and two national identity card numbers.

In around 2017, during the national population census, I was not in China. The police could not locate me so they chose to cancel my 25 June 1974 date of birth and also cancel my name 'Ping Li'.

I have never hidden my two names or that I have been to Australia before. It was the former migration agent who misled the Department of Home Affairs and led to my permanent resident visa being cancelled. I am an innocent person. I plead with the Tribunal to believe my statement and make a fair and trust decision to reinstate my permanent residency.

41. At hearing the applicant made oral submissions consistent with those outlined in her written submissions, translated 12 November 2020. Whilst emphasising her dissatisfaction with actions taken on her behalf by her previous migration agent and that she had not prepared the written response to the NOICC, dated 16 December 2019, the applicant did not dispute the incorrect nature of responses on the visa applications, as particularised in the NOICC and in points a) – i) above.
42. On the basis of this evidence the Tribunal finds answers provided on Form 47PA and Form 80 submitted in association with the applicant's application for the Contributory Parent visa, and in responses provided on her application for the Resident Return visa, as particularised in points a) – i) above were incorrect. The Tribunal has given due consideration to the overall submissions provided by the applicant and to her oral evidence at hearing. However, in relation to whether there was non-compliance in the way described in the s.107 notice and with respect to the requirement in s.101 that visa applications be correct and that a non-citizen must fill in or complete his or her application form in such a way that no incorrect answers are given or provided, the salient issue is whether incorrect information was given, or provided in relation to the Contributory Parent visa application, lodged on 18 December 2012 and the Resident Return visa application lodged on 12 July 2019.
43. Having regard to the information in the delegate's decision record and evidence provided by the applicant, the Tribunal finds that there was non-compliance with s.101(b) by the applicant in the way described in the s.107 notice.

Should the visa be cancelled?

44. As the Tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s.107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s.109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s.109(2).
45. In exercising this power, the Tribunal must consider the applicant's response (if any) to the s.107 notice about the non-compliance and have regard to any prescribed circumstances: s.109(1)(b) and (c). The prescribed circumstances are set out in r.2.41 of the Regulations. Briefly, they are:

- the correct information
 - the content of the genuine document (if any)
 - whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document
 - the circumstances in which the non-compliance occurred
 - the present circumstances of the visa holder
 - the subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act
 - any other instances of non-compliance by the visa holder known to the Minister
 - the time that has elapsed since the non-compliance
 - any breaches of the law since the non-compliance and the seriousness of those breaches
 - any contribution made by the holder to the community.
46. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedures Advice Manual (PAM3) 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters.

The correct information

47. On the basis of the Departmental finding that Ping Li and Yanhua Li are the same person, which the applicant did not dispute at the Tribunal hearing, the Tribunal finds that the correct information is as follows:
- j) Part F - Details of partner
Question 41
Has your partner been known by any other names?
(including name at birth, previous married names, aliases)
No

In relation to this response, it is incorrect as the applicant has been known by another name, namely Yanhua Li.

- k) Part K - Character
Question 57
Have you, or any other person included in this application, ever:
 - been removed or deported from any country (including Australia)? **No**

In relation to this response, it is incorrect as Departmental records indicate that under the identity of Yanhua Li the applicant was voluntarily removed from Australia on 20 April 2012.

- been excluded from or asked to leave any country (including Australia)? **No**

In relation to this response, it is incorrect as Departmental records indicate that under the identity of Yanhua Li the applicant was subject to a three-year exclusion period from applying for certain temporary visas to Australia.

48. As part of her Contributory Parent visa application, the applicant provided a completed Form 80 – Personal particulars for character assessment, dated 8 October 2012. The Form 80 included her answers to the following questions:

l) Question 7

Have you ever been known by other names or spellings of your name?

Examples of the types of other names:

- name at birth
- name before or after marriage
- adoptive or foster name
- alias or pseudonym
- cultural or tribal name or clan/subclan name
- preferred name
- patronymic name
- other spelling of names

No

In relation to this response, it is incorrect as the applicant has been known by another name, namely Yanhua Li.

m) Question 8

49. Have you ever had an alternative date of birth?

50. **No**

51.

In relation to this response, it is incorrect as Departmental records indicate the applicant, under the identity of Yanhua Li, had an alternative date of birth of 20 July 1968.

n) Question 43

52. Have you travelled to Australia before?

53. **No**

54.

55. ***In relation to this response, it is incorrect as Departmental records indicate the applicant, under the identity of Yanhua Li, travelled to Australia on 22 July 2006.***

o) Part H - Character details

56. Question 57

57. Have you, or any other person included in this application, ever:

- been removed or deported from any country (including Australia)? **No**

In relation to this response, it is incorrect as Departmental records indicate that under the identity of Yanhua Li the applicant was voluntarily removed from Australia on 20 April 2012.

58.

- been refused a visa for Australia or any other country? **No**

In relation to this response, it is incorrect as Departmental records indicate that under the identity of Yanhua Li the applicant lodged a [visa] application on 29 August 2006 which a delegate of the Minister refused on 10 November 2006.

- been excluded from or asked to leave any country (including Australia)? **No**

59.

In relation to this response, it is incorrect as Departmental records indicate that under the identity of Yanhua Li the applicant was subject to a three-year exclusion period from applying for certain temporary visas to Australia.

60. On 12 July 2019, the applicant lodged an online application for a Resident Return (Subclass 155) visa. As part of the application, she provided a completed electronic Record of Responses – Application for a Resident Return Visa form, which included her answers (in italics and emphasised) to the following questions:

p) Other names/spellings

61. Is this applicant currently, or have they ever been known by any other names?

62. **No**

63.

In relation to this response, it is incorrect as the applicant has been known by another name, namely Yanhua Li.

64.

65.

q) Character Declarations

66. Has the applicant ever been removed or deported from any country (including Australia)?

67. **No**

68.

In relation to this response, it is incorrect as Departmental records indicate that under the identity of Yanhua Li the applicant was voluntarily removed from Australia on 20 April 2012.

69.

70.

r) Has the applicant ever overstayed a visa in any country (including Australia)?

71. **No**

72.

In relation to this response, it is incorrect as Departmental records indicate that under the identity of Yanhua Li the applicant became an unlawful non-citizen when:

i. a Bridging A visa granted to her in association with the [visa] application ceased to be in effect after 14 August 2007;

ii. a Bridging E visa granted to her pending the outcome of her Ministerial Intervention request ceased to be in effect after 27 May 2008.

73. In the response to the NOICC, dated 16 December 2019, it is contended that the incorrect responses on both the 2012 Contributory Parent and 2019 Resident Return visa applications were due to factors including: the applicant's '*illiteracy to migration laws*²', advice provided by friends and the Contributory Parent visa application being prepared by a migration agent with assistance from Mr Yuan Tinge. In this response it is contended that the applicant did not think too much about information she provided to Mr Yuan Tinge about '*the travels and stays I had been to Australia before as predominantly believed no affection to the permanent visa application*³'. The NOICC response further contends that on the basis that no concerns were raised about responses provided on the Contributory Parent visa application, similar responses were placed on the Resident Return visa application in 2019.
74. The more recent written statement from the applicant contends that in relation to the 2012 visa application, the applicant gave accurate information to the previous migration agent she had engaged to assist in preparing the Contributory Parent visa application. She confirms that Mr Yuan Tinge assisted with the visa applications, acting as an intermediary facilitating communication between her and the migration agent.
75. In the more recent written statement the applicant contends that she has '*never hidden anything, including my name and my life in Australia before, and being sent to Immigration*

²Response to NOICC dated 16 December 2019.

³Response to NOICC dated 16 December 2019.

*detention, and all kinds of things*⁴. In this statement the applicant contends that her previous migration agent prepared the response to the NOICC, dated 16 December 2019, on her behalf and without involving her in preparing the response. She states that after the migration agent told her not to worry, because she is '*not a terrorist*'⁵ and is a '*good person*' she signed the NOICC response, without having any involvement in its preparation. She said that she thought the migration agent was '*the professional. I do not understand much. I rely on you*'⁶. The applicant further contends that information was placed on her application for the Resident Return visa by the same migration agent and that she relied on their assistance in a similar way as she had in relation to preparing the Contributory Parent visa application.

76. As discussed elsewhere in this decision, at hearing the applicant made oral submissions consistent with those outlined in her written submissions, translated 12 November 2020, with respect to both her dissatisfaction with her previous migration agent and that incorrect responses were provided, as detailed in points j) through r) above.
77. In considering the applicant's evidence and claims it would appear she is claiming to have had no involvement in preparing the initial response to the NOICC. It is not clear if by doing so she is suggesting the Tribunal should have no regard to the claims in this document. Due to the ambiguity with regard to this issue the Tribunal has considered the factors from this document that appear relevant to consideration of the issue of the correct information, which in summary appear to be: lack of understanding of Australian migration law, advice from friends, not thinking too much about previous travel to and stays in Australia and communication with her previous migration agent being complicated by Mr Yuan Tinge acting as an intermediary.
78. With regard to a claimed lack of understanding of Australian migration law, the Explanatory Memorandum to the *Migration Reform Bill 1992* (Cth) explains that the intention in relation to the requirement that visa applications be filled out in such a way that all questions are answered and no incorrect answers are given is to prevent non-citizens from benefiting from the failure to disclose or provide accurate and truthful information in a visa application. Section 101 requires visa applications to be correct and the language of this provision is clear. It states, 'A non-citizen **must** [emphasis added] fill in or complete his or her application form in such a way that: (a) all questions on it are answered; and (b) no incorrect answers are given or provided.' The Tribunal considers ignorance or 'illiteracy' of the requirements of the Act and Regulations to not excuse or ameliorate the circumstances whereby incorrect answers are provided on a visa application and has given no weight to this contention as a reason to not cancel the visa.
79. For similar reasons, that is, the requirement that visa applications be correct (s.101), the Tribunal has given no weight to the claim the applicant completed the Contributory Parent visa application on the basis of not thinking too much about previous travel to and stays in Australia. Further to this, s.100 provides that an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.
80. The Tribunal considers the provisions of s.98, s.99, s.100 and s.101 cumulatively address the circumstances raised in the November 2020 statement from the applicant, where she contends she at all times provided accurate and complete information to the previous migration agent with regard to her detention history in Australia and about her holding two identities in China. After considering this contention, the Tribunal does not consider this to be a factor it gives weight to in favour of not cancelling the visa.

⁴ Written statement from the applicant, translated and received 12 November 2020.

⁵ Written statement from the applicant, translated and received 12 November 2020.

⁶ Written statement from the applicant, translated and received 12 November 2020.

81. As to the claim the incorrect information was placed on both the Contributory Parent and Resident Return visa applications by the previous migration agent, in essence by someone other than herself, this claim is put forward in both the December 2019 NOICC response and the more recent November 2020 written statement prepared by the applicant. The Tribunal does not consider this to be a factor it gives weight in favour of in not cancelling the visa as the Act is clear in relation to this point. Section 98 provides that a non-citizen who does not fill in his or her application form is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.
82. The Tribunal has had regard to the applicant's claims, as they were provided at hearing and in written documents provided to the Tribunal in her name. Whilst noting the applicant's claims that she relied on the professionalism of the migration agent she was previously assisted by and other arguments put forward by the applicant, I consider it of great importance to the integrity of the visa system that applicants provide true details of their identity in order for an assessment to be made of their claims, their migration history and to allow other assessments such as character and security to occur. I give this significant weight towards the visa being cancelled.

The content of the genuine document (if any)

83. This is not relevant in this case.

Whether the decision to grant a visa to (or immigration clear) the visa holder was based, wholly or partly, on incorrect information or a bogus document

84. The Tribunal is satisfied and for the reasons explained that the applicant has provided incorrect answers in the visa applications as to alternate names and related identity information she has been known by and in relation to her migration history.
85. In her most recent written statement the applicant has not commented on this factor. In response to a question about this factor at hearing the applicant told the Tribunal that she felt as though the situation she finds herself in is not her fault as she gave the previous migration agent the correct information and the mess that she is in is the fault of the previous migration agent. The Tribunal considers the applicant's oral evidence more pertinent to consideration of the circumstances whereby the non-compliance occurred and has primarily addressed it there. Insofar as it pertains to this factor, the Tribunal infers the applicant is drawing a distinction between responses on the visa applications that were given on her behalf by her previous migration agent or provided directly by her. In considering whether the decision to grant a visa to the visa holder was based, wholly or partly, on incorrect information the Tribunal does not consider the distinction inferred by the applicant to be a factor in favour of not cancelling the visa.
86. The Tribunal, notwithstanding the applicant's dissatisfaction with her previous migration agent and claim she was not involved in preparing the document, has considered the claim in the December 2019 response to the NOICC that:
- In respect to the likely effect on the decisions to grant me the Contributory Parent Visa and Resident Return Visa, as I have mentioned above that my friends told me that the exclusion period would not affect my application, hence even I had put every details related to my other identity under the name Yanhua Li into the application forms for the Contributory Parent Visa, the visa decision outcome would be the same. In other words, I was not benefited from missing out some of the information by choosing an easy way to complete the application.⁷
87. The Tribunal does not accept this claim, as irrespective of advice received from friends, the decision to grant the Subclass 155 Resident Return visa was based, wholly or partly, on the

⁷Response to NOICC dated 16 December 2019.

incorrect information that the applicant had provided in the applications for the Contributory Parent and Resident Return visas. The Tribunal notes that the applicant would not have been in a position to apply for a Resident Return visa in 2019 if she was not granted the Contributory Parent visa she had applied for in December 2012. Further to this, identity information and the correct identity assessment form a part of every decision to grant or not grant a visa. The application for the Contributory Parent visa during a period the applicant was excluded from applying for a visa permitting her to return to Australia was a factor central to consideration of whether a Contributory Parent visa would be granted. The incorrect information provided formed part of the Department's assessment of the applicant's qualification for the Contributory Parent and Resident Return visas, it follows therefore that both visa grant decisions were based partly on incorrect information.

88. The Tribunal considers that the incorrect information provided by the applicant was significant in the granting of her Resident Return visa. Therefore, this consideration weighs heavily towards exercising the discretion to cancel the Resident Return visa.

The circumstances in which the non-compliance occurred

89. The applicant was voluntarily removed from Australia on 20 April 2012, following her detention by Australian immigration authorities on 18 March 2012. She was detained under the name of Yanhua Li. At that time the applicant had spent three years and nine months onshore as an unlawful non-citizen after Bridging visas associated with unsuccessful judicial review and requests for ministerial intervention following the refusal of her application for a [visa] ceased on 27 May 2008. At the time of her voluntary removal from Australia the applicant was subject to a three-year exclusion period under the provisions of PIC 4014. The applicant applied for the Contributory Parent visa approximately eight months later in December 2012 under the name of Ping Li.
90. The Departmental file contains information provided anonymously in early 2018 that the applicant had returned to Australia using a fake passport in the name of Ping Li, date of birth 25 June 1974, whereas her actual identity was Yanhua Li, date of birth 20 July 1968. It was also alleged that the applicant paid \$80,000 for a fake husband to provide a way to return to Australia on a Contributory Parent visa. This information was put to the applicant in a letter sent to her on 16 December 2020 pursuant to s.359A of the Act.⁸ The letter explained to the applicant that she was invited to comment on or respond to the information, which could provide the reason, or part of the reason, for affirming the decision to cancel her visa. The letter explained that this was because if the Tribunal placed weight on this information it would support the concern that she had arranged for a passport and related identity documents under the name of Ping Li, date of birth 25 June 1974, so that she could avoid the three-year exclusion on applying for a visa to return to Australia that she was subject to when she was voluntarily removed from Australia in 2012 under the identity of Yanhua Li, date of birth 20 July 1968. The letter also explained that if the Tribunal gave weight to this information, it would also raise concern that the applicant entered into a contrived relationship to provide her with a pathway to return to Australia and seek permanent residency through a Contributory Parent visa. This would raise concern as to whether she is a truthful source of information and whether any information she has provided in support of her claims can be viewed as reliable.
91. The Tribunal received a response from the applicant on 21 December 2020, which consisted of a written statement from her and a written statement from a friend, Mr Kenneth Cheung, along with a copy of Mr Cheung's NSW driver's licence, verifying his identity. The statement from the applicant mostly reiterated claims she has made in other statements and evidence

⁸ The information provided anonymously was not covered by a non-disclosure certificate, as a consequence the Tribunal considered procedural fairness requirements were sufficiently covered by putting this adverse information to the applicant under the provisions of s.359A of the Act.

she has provided the Tribunal, along with the additional claim that she considers the anonymous information to have been provided by a person she knows for vexatious reasons. The statement from Mr Cheung attests to the applicant's good character and the genuine nature of her relationship with Mr Hong Ge Tian.

92. At hearing, the applicant gave evidence that she had always had two names, Yanhua Li and Ping Li. She explained that translated documents, provided with the review application, from the Chinese authorities established she had two hukou registrations in China. She said that one of the hukou registrations, under the identity of Ping Li, was cancelled by the Chinese authorities around three years ago in 2017 at the time a census was conducted.
93. The Tribunal considered the written statements received from the applicant and Mr Cheung in response to the s.359A letter sent to her on 16 December 2020. The Tribunal does not consider the motivation of the person who provided information to the Department, anonymously, in early 2020 to be a determinative factor when considering whether the discretion to cancel the visa should be exercised. As to the content of the anonymously provided information, the Tribunal considers accurate the allegation that the applicant departed Australia under the identity of Yanhua Li and subsequently returned under the identity of Ping Li. As to the allegation that the applicant entered into a contrived relationship with Mr Hong Ge Tian for the purpose of gaining a possible migration pathway to Australia, the Tribunal has not placed weight on this claim, due to a lack of other credible evidence that would establish this was the case. The Tribunal has however noted inconsistency between claims in the written statement of Mr Cheung, who states that the applicant and Mr Hong Ge Tian are in a genuine and continuing relationship and the claim in the written statement received from the applicant in November 2020 in which she stated she and Mr Hong Ge Tian separated in March 2020. The Tribunal notes the applicant at hearing conceded she and Mr Hong Ge Tian were separated.
94. As discussed in an earlier section of this decision, in a written statement received by the Tribunal in November 2020, the applicant attributes responsibility for the provision of incorrect information to her previous migration agent. In the statement the applicant states that she relied on the professionalism of the previous migration agent and this led her to not have active involvement with respect to information placed on either the 2012 application for the Contributory Parent visa or the more recent 2019 application for the Resident Return visa. In the statement the applicant explains why she had two names, with different dates of birth in China. She claims this was because bad luck in life led her to seek guidance from a fortune teller, who said there was a problem with her name and date of birth and advised her to change both of these things. In her statement the applicant states she then registered a new hukou and as a consequence held two hukous and two Chinese national identity card numbers until one was cancelled in around 2017 by the Chinese authorities.
95. The Tribunal has considered the applicant's claim at hearing that she has always had two names in China, as the issue of when the second identity, under the name of Ping Li is relevant to the circumstances in which the non-compliance occurred. This claim is partially contradicted by her November 2020 written statement which states she took out the second hukou registration after experiencing bad luck with regard to business ventures and relationships with men. There is no indication in the November 2020 written statement as to the specific date upon which she registered the second identity. She states that this was after she grew up, which the Tribunal has taken to indicate she registered an identity under the name of Ping Li, date of birth 25 June 1974, as an adult. Notably the applicant conceded at hearing that she was aware that a person is only permitted to have one identity in her home country.
96. In the record of decision whether to cancel the visa under s.109 of the Act, a copy of which was provided with the review application, the delegate found that the applicant had not

explained why she changed her name and date of birth after being removed from Australia and prior to lodging the application for the Contributory Parent visa. The delegate found that the applicant changed her name from Yanhua to Ping and her date of birth from 20 July 1968 to 25 June 1974 after her return to China in April 2012. The delegate noted that the applicant obtained identity documents containing the changed details and married Mr Hong Ge Tian on 2 November 2012.

97. The Tribunal has reviewed the translated documents provided by the applicant and notes that a document, titled 'Permanent Resident Information', refers to a 'Processing time: 06 Aug 2012', 'Status: Cancelled' and proceeds to detail the deletion of an alternate registration of citizen ID 232723197406259020 due to their holding another household registration by the name of 'Yanhua Li'. The document provides a 'Date of change – 29/06/2017' and also details the applicant's marital status as 'Not married'. The information on this document, whilst not totally clear because of the apparent difference in terminology used on Chinese documents, would appear to indicate the alternate registration of the citizen identification associated with Ping Li was processed in August 2012 and that this alternate registration was discovered and deleted in June 2017. This would add weight to the concern that the applicant arranged for the second identity under the name of Ping Li after she had returned to China in April 2012. A translated copy of a Notarial Certificate, dated 23 March 2020, provided to the Tribunal attests to the accuracy of the photocopy of the Permanent Resident Information document. The Tribunal accepts the authenticity of both the Notarial Certificate and Permanent Resident Information document.
98. The biodata page of the Chinese passport for the applicant's identity under Ping Li indicates this passport was issued to her in September 2012. The Tribunal finds this identity document, upon which the applicant applied for a visa permitting her to return to Australia using an identity other than that under which she had been voluntarily removed and subject to a three-year exclusion period, was obtained in China after her return there in April 2012. The Tribunal is satisfied this adds weight to the conclusion the applicant obtained the second hukou registration, under the identity of Ping Li, date of birth 25 June 1974, after her return to China in April 2012. In forming this view the Tribunal notes that the passport in the name of Ping Li was issued only a month following the processing of the Permanent Resident Information document provided by the applicant.
99. The Tribunal does not find the applicant's submissions with regard to this aspect of the circumstances in which the non-compliance occurred convincing. Whilst accepting the applicant registered an alternate identity with the Chinese authorities there is no credible evidence she had done so prior to her return to China in 2012. There is no evidence before the Tribunal to corroborate her claim at hearing that she has always had two names. Rather, the available evidence leads the Tribunal to find that the applicant arranged for the alternate identity documents under the name of Ping Li after her return to China in April 2012 following her being voluntarily removed from Australia and subject to a three-year exclusion period.
100. The applicant gave evidence at hearing that her previous migration agent was aware that she had two names and told her that she could return to Australia under either name. She said that the migration agent took it on themselves to put the name of Ping Li on the Contributory Parent visa application forms. She said that she does not know why the previous migration agent filled out the visa application in the way she did. The applicant hypothesised that perhaps the previous migration agent did it to save time but reiterated that she provided details of both of her identities to the previous migration agent. The Tribunal did not find the applicant's evidence in relation to this factor convincing. The Tribunal has found that the applicant created an alternate identity after returning to China in April 2012. Her explanation that this was because she was advised to do so by a fortune teller in the view of the Tribunal strains credulity in a manner that I am not satisfied is appropriate to do. I consider a preferable explanation is that the applicant was aware she was excluded from

applying for a visa permitting her to return to Australia for a three-year period under her actual identity and she created an alternate identity under a different name and date of birth so that she could use the alternate identity some eight months later when she applied for the Contributory Parent visa and again in July 2019 when she applied for the Resident Return visa.

101. In the written statement she prepared in November 2020 the applicant contends she does not know why her previous migration agent did not provide the correct information on the visa application forms. She claims that she was unaware of the incorrect information being placed on both the Contributory Parent and Resident Return visa applications until the previous migration agent told her that her Resident Return visa may be cancelled. The applicant indicates in her statement that at that point she again had no direct involvement in preparing a response to the NOICC received from the Department. The Tribunal is not persuaded by these claims and considers it implausible the applicant was unaware that the applications for the Contributory Parent and Resident Return visas did not disclose information regarding her migration history in Australia or the different identity details she had previously used on visa applications. This is because I am satisfied the applicant created the alternate identity under the name of Ping Li for the purpose of seeking to circumvent the three-year exclusion period precluding her from applying for a visa to return to Australia. As I am satisfied the alternate identity was created for this purpose, it follows that it is implausible the applicant would be unaware the alternate identity and incorrect details of her migration history were used in the Contributory Parent and Resident Return visa applications.
102. The December 2019 response to the NOICC is a document which, as discussed elsewhere in this decision, the applicant claims to have had no direct role in preparing or reviewing its contents. This document contends the circumstances of the non-compliance were that she was illiterate about migration laws and relied on her stepson to liaise with her previous migration agent for the purpose of preparing the application for the Contributory Parent visa application. The response to the NOICC claims that friends had told the applicant that a three-year exclusion period would not be applicable to future permanent visa applications. In this document it is claimed that the applicant did not think much about her previous travel and stay in Australia and *'did not take seriously when I tell my step-son [Mr Yuan Tinge] my basic information in regarding to the preparation of the application forms for the Contributory Parent visa'*⁹. It is contended that the applicant would have taken more care of her responses on the visa application forms if she had a higher level of education. It is further contended in this document that as the Contributory Parent visa was granted, the same information was placed on the application for the Resident Return visa.
103. Notwithstanding the applicant expressed dissatisfaction about how the NOICC response was prepared, the Tribunal has considered the claims made in this document as it is not clear that the applicant has requested the contents be disregarded. The Tribunal is not persuaded by the claim the applicant is illiterate about migration law. Over time she has had extensive involvement with Australian migration procedures, whether through applying for a range of visas, or the judicial mechanisms available to her when visa applications were refused. The Tribunal does not consider the acquisition of alternate identity documents and marriage under the alternate identity, thereby providing a possible migration pathway which circumvented a three-year exclusion period, to be the actions of a person who was not well versed in migration procedures and Australian visa requirements. The actions involved in arranging the alternate identity belie the inference in the claim the applicant was a passive participant in the visa applications, merely signing where told to, oblivious to whether information on applications was correct. The Tribunal considers the claim the applicant did not take seriously information she gave to Mr Yuan Tinge about her previous migration

⁹Response to NOICC dated 16 December 2019.

history to reflect an attempt to rationalise incorrect information in the visa applications. The Tribunal views the claim that the applicant was told by friends that future permanent visa applications would not be affected by a three-year exclusion period in a similar light. Whilst this advice may be accurate if a further visa application was made more than three years after the applicant was voluntarily removed from Australia in April 2012, I do not accept the applicant has provided a plausible explanation as to why she thought the exclusion period would not apply to a visa application made around eight months after she had had the three-year exclusion period imposed upon her.

104. In any event, the Tribunal is of the view that irrespective of what the previous migration agent and Mr Yuan Tinge did or did not discuss in relation to information the applicant may have provided to Mr Yuan Tinge in relation to the application for the Contributory Parent visa application, it is the applicant who is under an obligation to ensure that the information provided in an application for a visa is correct. Alleging negligence on the part of her previous migration agent, or by inference possibly her stepson does not strengthen the applicant's position because it is the responsibility of the applicant to ensure that correct information has been provided.
105. The Tribunal has carefully considered arguments and evidence put forward by the applicant in relation to the circumstances in which the non-compliance occurred. The Tribunal has concluded the applicant actively sought to circumvent the three-year exclusion period she was subject to when voluntarily removed from Australia in April 2012 and that the incorrect information regarding her identity and migration history provided in association with her 2019 Resident Return visa application was consistent with incorrect information provided in her earlier 2012 application for a Contributory Parent visa. The Tribunal finds that this consideration weighs heavily towards exercising the discretion to cancel the Resident Return visa.

106. *The present circumstances of the visa holder*

107. In the written statement she provided to the Tribunal in November 2020 the applicant states that she separated from her husband, Mr Hong Ge Tian, on 15 March 2020. At hearing the applicant initially claimed that she and Mr Hong Ge Tian were still a couple, albeit living separately because of the Covid-19 pandemic. She did not explain why the pandemic necessitated her living separately to Mr Hong Ge Tian. When asked to comment on the claim in her written statement that she separated from Mr Hong Ge Tian in March 2020 she said that there were arguments between her and Mr Hong Ge Tian as he refused her proposal to have her name on the title for a property he intended to purchase.
108. At hearing the applicant gave evidence that she is not working at the present time. She does not comment on employment or other aspects of her present circumstances in her November 2020 written statement. In the December 2019 response to the NOICC it states that the applicant had worked in different sorts of jobs whilst in Australia and was at that time working as a masseur. The response to the NOICC referred to evidence of taxation paid to the Australian Taxation Office in support of this claim and at hearing the applicant also gave evidence that she had paid taxes, as required, whilst she has been in Australia.
109. The response to the NOICC also made reference to the applicant suffering from health conditions, however there was no indication of specific health problems experienced by the applicant or the relevance of this factor to consideration of her present circumstances. The applicant made no references to health conditions in her November 2020 written statement, or in her evidence at hearing.
110. The applicant gave evidence at hearing that she does not own property in China and that there would be no way for her to make a living if her visa is cancelled and she has to return

to her home country. She said that she has now lived in Australia for over 10 years and that she is used to the Australian culture.

111. The Tribunal has carefully considered the applicant's situation and current circumstances. There is no evidence before the Tribunal to demonstrate she holds assets in Australia which would be adversely impacted by the cancellation of her visa. The Tribunal accepts she has paid required taxes at times she has worked lawfully in Australia but notes that her evidence regarding her present circumstances indicates she is not employed at the present time. Whilst her evidence regarding her view as to whether this separation is long term or not, the applicant did not dispute the accuracy of the indication in her November 2020 written statement that she separated from Mr Hong Ge Tian in March 2020. Mr Hong Ge Tian did not respond to attempts to contact him by telephone during the hearing and has not provided evidence following the hearing in support of the applicant's claims.
112. The Tribunal accepts there will be challenges faced by the applicant if she returns to China after residing away from her home country for over 10 years and other potential impacts on the applicant from a visa cancellation. However in the view of the Tribunal, consideration of these factors needs to be balanced with the intent of s.101(b) and the seriousness of breaching these provisions. The Tribunal considers the provision of incorrect information in an application for a visa to be serious, significant and goes to the core of the integrity of Australia's migration program. The Tribunal does not consider the applicant's own circumstances as outweighing other considerations.

The subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act

113. Nothing adverse is known about the applicant's subsequent behaviour concerning her obligations under the above provisions since her application for the Resident Return visa was lodged in July 2019. The Tribunal received a response, purportedly from the applicant to the NOICC. At hearing she said that she signed the December 2019 NOICC response, but denies involvement in preparing the document. The applicant has provided submissions to the Tribunal and attended the hearing. I am satisfied she engaged with the process at the Tribunal and has acknowledged the correct information in her evidence to the Tribunal. I therefore give this some limited weight in favour of the visa not being cancelled.

114. Any other instances of non-compliance by the visa holder known to the Minister

115. There are two other instances of non-compliance known to the Minister. The applicant, under the identity of Yanhua Li remained onshore as an unlawful non-citizen from 14 August 2007 until 7 December 2007 and from 27 May 2008 until her voluntary removal on 20 April 2012. In total, Ms Li spent four years and three months onshore as an unlawful non-citizen. During periods in the time she was unlawful she earned income, without having permission to work in Australia. Based on this the Tribunal finds that the applicant worked in Australia in contravention of migration regulations. The Tribunal considers these other instances of non-compliance give weight in support of exercising the discretion to cancel the visa.

The time that has elapsed since the non-compliance

116. Whilst a considerable period of time passed from the initial non-compliance in 2012, the applicant did not take steps to correct the incorrect information. The most recent non-compliance took place in July 2019, less than 18 months ago. Taking this into account I give no weight to this factor.

Any breaches of the law since the non-compliance and the seriousness of those breaches

117. At hearing, the applicant stated that she had always been a law-abiding person in Australia and that she had never broken the law in Australia. This contention is consistent with the December 2019 response to the NOICC, where it is declared that the applicant has not breached the law since she migrated to Australia as a contributory parent.
118. There is evidence before the Tribunal of a breach of the law by the applicant. Particulars of this information and explanation as to why it is relevant were put to the applicant in a letter sent to her on 23 November 2020 pursuant to s.359A of the Act. The letter explained to the applicant that she was invited to comment on or respond to the information, which could provide the reason, or part of the reason, for affirming the decision to cancel her visa. The information is that a Verdict and Judgement record from the Brisbane Magistrates Court indicates that on 20 July 2016 the applicant was convicted (not recorded) of one charge of, on 12 June 2016, Knowingly participate in the provision of prostitution; and one charge of, on 12 June 2016, Possess tainted property.
119. The s.359A letter explained to the applicant that if the Tribunal was otherwise satisfied the ground exists to cancel her Resident Return visa, a prescribed condition, when considering whether to exercise the discretion to cancel the visa, is whether there have been any breaches of the law since the non-compliance and the seriousness of those breaches. The letter further explained that if the Tribunal was to find the Verdict and Judgement record from the Brisbane Magistrates Court demonstrates she had breached the law in the period since non-compliance of the Contributory Parent visa application lodged in 2012, and after considering the seriousness of those breaches, this may place weight in favour of cancelling her Resident Return visa.
120. The Tribunal received a response on 25 November 2020, which consisted of a statutory declaration from the applicant and a statutory declaration from the solicitor who acted for the applicant in relation to a criminal matter in or about July 2016.
121. The statutory declaration from the applicant, declared that she did not attend court in relation to the case, which happened more than four years ago. She declared a solicitor went to the court on her behalf and after that she received a WeChat message from the solicitor in which she was asked to pay a \$1000 fine to the court and was told that was the end of the matter. The applicant declared she was not told that the conviction was a criminal offence and that she did not understand the nature of the matter. She declared that she did not understand words such as offence, conviction, charges and tainted property. The applicant declared that her understanding at the time was that she did not have to tell anybody about this court fine because a conviction was not recorded. The applicant declared that she has spoken to the solicitor involved and now understands the nature of the conviction and she sincerely apologises to the Tribunal for her incorrect response to the question about whether she had been charged with or convicted of any offences while she had been in Australia. The applicant declared that she has taken Australia as her home and she loves Australia. She declared that she will work hard in Australia and pay tax to the country. She declared that she will actively participate in community work and donate her organs to those Australians who need a transplant after her death.
122. The statutory declaration from the solicitor who acted for the applicant in relation to the Verdict and Judgement record from the Brisbane Magistrates Court declared that the applicant pleaded guilty to the charges ex parte in the first court mention and that she was ordered to pay a \$1000 fine without a conviction being recorded. The solicitor declared that the applicant paid the fine promptly and that she does not remember explaining to the applicant at that time that she had a duty of disclosure in relation to any charges, convictions

recorded or not recorded, to any authority if she was required to do so in the future. The solicitor confirmed she had now discussed the nature of the charge and the applicant's duty of disclosure with the applicant on 25 November 2020 and had the impression from that interaction that the applicant continues to not fully understand the nature of her criminal charges, convictions and the duty of disclosure on her part.

123. Included with the statutory declaration from the solicitor was a document from the Magistrates Court of Queensland and Brisbane titled Details of Trial, Sentence, or Other Dealing by the court, dated 20 July 2016. This document details the offences recorded in the Verdict and Judgement record and indicates that the offences both occurred on 12 June 2016. The offences were Knowingly Participate in the Provision of Prostitution and Possess Tainted Property. A review of the Queensland Criminal Code indicates that the former offence involves a person who knowingly participated, directly or indirectly in the provision of prostitution by another person.¹⁰
124. The Tribunal has considered the applicant's response to the information put to her in the s.359A letter. Whilst the Tribunal considers it reasonable that the applicant may not have fully understood the outcome from the proceedings involving her in the Brisbane Magistrates Court in 2016, the Tribunal is not persuaded this adequately explains why she would claim to have been a law-abiding person throughout the time she has been in Australia. The Tribunal finds the applicant has sought to minimise her criminal history in Australia.
125. Irrespective of the applicant's understanding of whether she has breached the law since the non-compliance occurred the issues for the Tribunal to consider in relation to this factor are whether breaches of the law in fact occurred and the seriousness of any such breaches. The Tribunal finds the applicant was convicted of two offences in 2016 and is satisfied these constitute breaches of the law since the non-compliance in relation to the 2012 application for the Contributory Parent visa. As to the seriousness of the breaches, the Tribunal notes that the initial offence for which the applicant was convicted, participation in the provision of prostitution by another person, has a potential maximum penalty for a first offence of a three-year term of imprisonment.¹¹ The Tribunal considers this to be indicative of the serious nature of this offence and has determined to give this factor significant weight in favour of exercising the discretion to cancel the visa.

Any contribution made by the visa-holder to the community

126. At hearing the applicant indicated that she is not employed at the present time, but that she has paid tax at times she has earned an income. She indicated that she has donated to worthy causes whilst she has been in Australia, including during the bushfires in early 2020. Further to this the applicant said she donated gloves to nursing homes during 2020 and that she has also given clothes to the Red Cross. She said that she is preparing herself to volunteer to help senior people in their home but has yet to actually make a formal commitment to this sort of voluntary work.
127. In the December 2019 response to the NOICC the applicant's active participation in her local community, involving her support for newly arrived migrants, especially from the same background and area as she came from, was emphasised.
128. The Tribunal acknowledges those contributions but does not find them to be persuasive reasons not to cancel the visa.

129. Other matters

¹⁰www.legislation.qld.gov.au

¹¹www.legislation.qld.gov.au

130. In addition to the matters set out in r.2.41, Departmental policy (PAM3) suggests that consideration should also be given to other relevant factors. These include whether there are persons in Australia whose visa would, or may, be automatically cancelled under s.140 of the Act; whether there are mandatory legal consequences to the cancellation decision; and whether the visa cancellation may result in Australia breaching its international obligations.

131. Although not binding upon it, the Tribunal acknowledges that it is appropriate to have regard to these considerations, and any other relevant issue, raised by the evidence before it. Accordingly, these are discussed as follows:

132. *Consequential cancellation*

133. There is no evidence before the Tribunal to indicate that, if the applicant's visa is cancelled, there are persons in Australia whose visas will, or may, be cancelled under s.140 of the Act. This is because no other person holds a visa because the applicant holds a visa.

134. Taking this into account I give no weight to this factor.

135. *International obligations*

136. The policy guidelines require I should assess whether Australia would be in breach of its international obligations if the visa is cancelled. These include the obligation in relation to [non-refoulement].

137. The applicant, under the identity Yanhua Li previously applied for a [visa], which was refused by the Department in 2006. This decision was [affirmed] in 2007 and her subsequent application for a judicial review of this decision was not successful. She has not indicated at hearing, in the December 2019 response to the NOICC or the more recent November 2020 written statement that she fears returning to her home country for a Convention reason. Accordingly the Tribunal is satisfied that there are no relevant international agreements that would or may be breached as a result of the visa cancellation. Nor is there any evidence to suggest that cancellation would lead to the applicant's removal in breach of Australia's non-refoulement obligations.

138. Taking this into account I give no weight to this factor.

139. *Best Interests of Child and Interference with Family Unit*

140. PAM3 guidelines suggest assessment take place of whether Australia would be in breach of its obligations under the *Convention on the Rights of the Child* (CRC) if the visa were to be cancelled. The guidelines set out in Procedural Instruction General visa cancellation powers stipulate:

141. The obligation to consider the best interests of the child applies to those children who are under 18 years old (noting that the child must have already been born) and the obligations apply only to children who are within Australia's territory or jurisdiction.

142. At hearing the Tribunal asked the applicant about a claim in the December 2019 response to the NOICC that she is a caring mother and that she wishes to give her child a better life. Mr Yuan Tian, the son of Mr Hong Ge Tian, who the applicant has indicated she separated from in March 2020 is 31 years of age. Departmental records indicate she is the biological mother of a son, aged 28 years, who resides in China. The applicant made no claim at hearing to have caring and support responsibilities to any children under the age of 18 years, either in Australia or her home country.

143. The applicant gave inconsistent information regarding the status of her relationship with Mr Hong Ge Tian. The Tribunal considers the weight of this evidence indicates that there is not a committed and ongoing relationship between the applicant and Mr Hong Ge Tian. The applicant gave no evidence at hearing that would suggest he would be adversely impacted by the cancelling of her visa.

144. Taking all of this into account I give this consideration weight in favour of cancelling the visa.

145. Hardship to the applicant

146. The applicant contends that cancelling her visa would cause her hardship as she does not own property in China and would have no way to earn an income there. She contends that she has been in Australia for over 10 years and is now more familiar and at ease with Australian culture than she is with the culture of her home country.

147. The Tribunal accepts that the applicant has resided in Australia for a period long enough to have developed familiarity with Australian culture and society. The Tribunal accepts that if the applicant's visa is cancelled this would inevitably result in disruption to her plans to live and work in Australia. The Tribunal is not however persuaded she has demonstrated why she would not retain a strong sense of the culture of her home country, or that she would be unable to function effectively within Chinese society. The applicant has an adult son in China and there is no evidence before the Tribunal to establish why this would not mitigate some of the difficulty the applicant may experience as a consequence of returning to her home country in a context where she does not own property there.

148. The evidence before the Tribunal indicates the applicant separated from Mr Hong Ge Tian in March 2020. It is not clear as to whether this is a permanent separation or not. In the event it is not and the parties formed an intention to reconcile, the Tribunal accepts that the applicant and Mr Hong Ge Tian may well experience some hardship if she is required to return to China. However, it is open to the applicant to make a further visa application from China and the applicant's partner could spend time with her there during the visa processing period (pending COVID-19 international travel restrictions) if the parties do not wish to maintain their current separate lives. Alternatively, the applicant and her partner can maintain contact through electronic means and also meet in a third country to maintain contact.

149. The Tribunal accepts that the applicant may well experience some hardship if she is required to return to China but has formed the view that the level of hardship would be within the applicant's capacity to manage. Taking all of this into account I give this consideration no weight in favour of, or against, cancelling the visa.

150. Mandatory legal consequences

151. Indefinite detention is not a likely consequence of the decision to cancel the applicant's visa. She may become an unlawful non-citizen and be liable to detention under s.189 and removal from Australia under s.198 of the Act if the visa is cancelled. However, it is open to the applicant to return to China within the allowed departure period. The applicant would be subject to s.48 of the Act, limiting the types of further visa applications she could validly lodge while she remained in Australia and she will also be subject to PIC 4013, which prevents her from being granted certain visas applied for within three years from the visa cancellation date.

152. Taking into account all of the above, I consider these consequences to reflect the intention of s.101 and s.109 of the Act, namely that there are consequences of non-compliance with the requirement that visa applications be correct and taking this into account I give no weight to this factor.

153. *Conclusions*

154. The applicant has presented herself as an unsophisticated person with a lack of formal education. She contends that this, in conjunction with her lack of English language skills, mitigates her responsibility for both the incorrect information on her visa applications and for evidence she gave at hearing, such as with regard to her criminal history, which is not consistent with information available to the Tribunal from other sources. The Tribunal is not persuaded by this basic contention and considers it an attempt on the part of the applicant to minimise her personal responsibility and avoid accountability for her choices.
155. The Tribunal has carefully considered the applicant's claims with regard to why she held two different identity registrations in her home country. The Tribunal does not accept the contention that the applicant had no role in the use of the identity of Ping Li in relation to the 2012 application for a Contributory Parent visa. The Tribunal does not accept the contention that the use of the identity of Ping Li in the 2012 application for a Contributory Parent visa was by coincidence and unrelated to the voluntary removal and exclusion period the applicant was subject to in April 2012. The Tribunal finds the use of the Ping Li identity was motivated by a wish to circumvent the voluntary removal and exclusion period the applicant was subject to in April 2012, under the identity of Yanhua Li.
156. In considering the prescribed and other relevant factors cumulatively in relation to whether the Tribunal should exercise the discretion to cancel the visa the Tribunal has taken into account the applicant's acknowledgement that incorrect information was placed on the visa applications. The Tribunal is however of the view that she continues to not take responsibility for this non-compliance, as she continues to attribute responsibility to her previous migration agent. The Tribunal does not accept the applicant's claims with regard to this issue and considers the applicant's position to mitigate positive weight that may otherwise be attributed to her acknowledgement that incorrect information was placed on the visa applications.
157. The Tribunal considers the breaches of the law committed by the applicant since the initial non-compliance in 2012 to be of a serious nature and is not reassured by what it considers to be her endeavour to deny or minimise these breaches of the law. The Tribunal has concern that the applicant spent a considerable period of time as an unlawful non-citizen in Australia and earned an income during some of these periods, despite having no work rights in Australia.
158. The Tribunal acknowledges the applicant has cumulatively spent over 10 years in Australia and may face some challenge to adjusting to life back in her home country. The Tribunal has also placed weight, when considering whether there are sufficient factors in favour of not cancelling, upon the applicant's contributions to Australia through her donation to charity groups and reported positive involvement in her local community. The Tribunal has considered the impacts on both the applicant and her estranged partner if the visa is cancelled, in terms of the difficulties this could potentially place upon their relationship.
159. When considering the relevant factors cumulatively, the Tribunal is mindful of the intent of s.101 and the important role such a provision has in ensuring the Commonwealth authorities have effective mechanisms in place to assess people seeking visas to migrate to Australia.
160. The Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s.107 of the Act. Further, having regard to all the relevant circumstances and factors, as discussed in this decision, the Tribunal concludes that the visa should be cancelled.

DECISION

161. The Tribunal affirms the decision to cancel the applicant's Subclass 155 (Five Year Resident Return) visa.

David Barker
Member

ATTACHMENT – *Migration Act 1958* (extracts)

5 Interpretation

- (1) In this Act, unless the contrary intention appears:
- bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:
- (a) purports to have been, but was not, issued in respect of the person; or
 - (b) is counterfeit or has been altered by a person who does not have authority to do so; or
 - (c) was obtained because of a false or misleading statement, whether or not made knowingly.

97 Interpretation

In this Subdivision:

application form, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

passenger card has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: **Bogus document** is defined in subsection 5(1).

98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

101 Visa applications to be correct

A non-citizen must fill in or complete his or her application form in such a way that:

- (a) all questions on it are answered; and
- (b) no incorrect answers are given or provided.

107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
- (a) giving particulars of the possible non-compliance; and
 - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
 - (i) if the holder disputes that there was non-compliance:
 - (A) shows that there was compliance; and
 - (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
 - (ii) if the holder accepts that there was non-compliance:
 - (A) give reasons for the non-compliance; and
 - (B) shows cause why the visa should not be cancelled; and
 - (c) stating that the Minister will consider cancelling the visa:

- (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
 - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
 - (iii) otherwise—at the end of that period; and
- (d) setting out the effect of sections 108, 109, 111 and 112; and
- (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
- (f) requiring the holder:
 - (i) to tell the Minister the address at which the holder is living; and
 - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
 - (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
 - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
 - (a) visas of a stated class; or
 - (b) visa holders in stated circumstances; or
 - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
 - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.

108 Decision about non-compliance

The Minister is to:

- (a) consider any response given by a visa holder in the way required by paragraph 107(1)(b); and
- (b) decide whether there was non-compliance by the visa holder in the way described in the notice.

109 Cancellation of visa if information incorrect

- (1) The Minister, after:
 - (a) deciding under section 108 that there was non-compliance by the holder of a visa; and
 - (b) considering any response to the notice about the non-compliance given in a way required by paragraph 107(1)(b); and
 - (c) having regard to any prescribed circumstances;
 may cancel the visa.
- (2) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist circumstances declared by the regulations to be circumstances in which a visa must be cancelled.